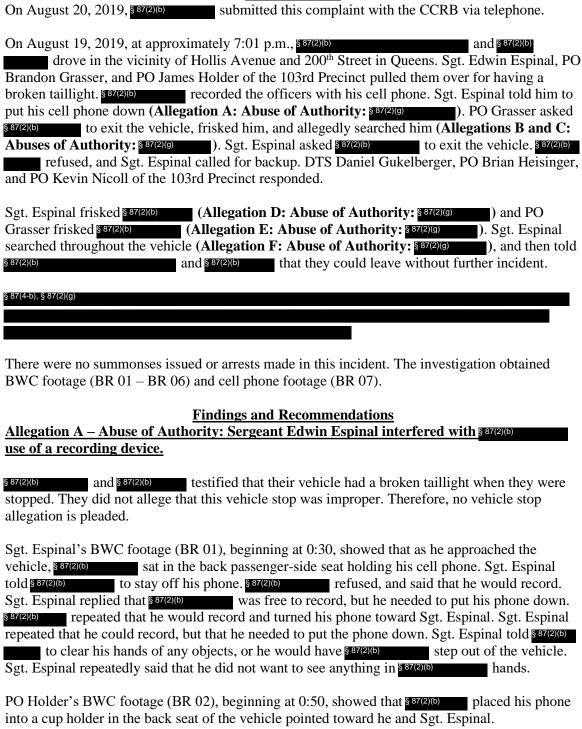
CCRB INVESTIGATIVE RECOMMENDATION

| Investigator: | | Team: | CCRB Case #: | ☐ For | ce [| Discourt. | ☐ U.S. |
|----------------------------|---|--|-----------------------|--------|----------|----------------|------------|
| Mac Muir | | Squad #6 | 201907390 | ☑ Abı | ise [| O.L. | ☐ Injury |
| Incident Date(s) | | Location of Incident: | - | Preci | nct: 1 | 18 Mo. SOL | EO SOL |
| Monday, 08/19/2019 7:01 PM | | Hollis Avenue and 200 | th Street | 11 | 3 | 2/19/2021 | 10/6/2021 |
| Date/Time CV Reported | | CV Reported At: | How CV Reported | : Date | /Time Re | eceived at CCl | RB |
| Tue, 08/20/2019 12:49 PM | | CCRB | Phone | Tue | 08/20/20 | 019 12:49 PM | |
| Complainant/Victim | Туре | Home Addre | ess | | | | |
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| | | | | | | | |
| Witness(es) | | Home Addre | ess | | | | |
| | | | | | | | |
| Subject Officer(s) | Shield | TaxID | Command | | | | |
| 1. SGT Edwin Espinal | 03384 | 934831 | 103 PCT | | | | |
| 2. POM Brandon Grasser | 14283 | 955961 | 103 PCT | | | | |
| Witness Officer(s) | Shield N | o Tax No | Cmd Name | | | | |
| 1. POM James Holder | 18361 | 951823 | 103 PCT | | | | |
| Officer(s) | Allegatio | n | | | Investi | gator Recon | nmendation |
| A.SGT Edwin Espinal | Abuse: Sause of a r | gt. Edwin Espinal interf ecording device. | Fered with § 87(2)(b) | | | | |
| B.POM Brandon Grasser | Abuse: Police Officer Brandon Grasser frisked § 87(2)(b) | | | | | | |
| C.POM Brandon Grasser | Abuse: Police Officer Brandon Grasser searched \$87(2) | | | | | | |
| D.SGT Edwin Espinal | Abuse: Sergeant Edwin Espinal frisked § 87(2)(b) | | | | | | |
| E.POM Brandon Grasser | Abuse: Police Officer Brandon Grasser frisked § 87(2)(b) | | | | | | |
| F.SGT Edwin Espinal | Abuse: Sergeant Edwin Espinal searched the vehicle in which \$87(2)(b) and \$87(2)(b) were occupants. | | | | | | |
| § 87(4-b), § 87(2)(g) | | | | | | | |
| § 87(4-b), § 87(2)(g) | | | | | | | |
| § 87(4-b), § 87(2)(g) | | | | | | | |
| § 87(4-b), § 87(2)(g) | | | | | | | |

Case Summary



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| provided a cell phone video (BR 07), that beginning at 0:00, showed him recording Sgt. Espinal and PO Holder. Sgt. Espinal asked him to put down his cell phone and clear his hands of objects. As [887(2)(b)] placed the phone in a cup holder, the video ended. |
|---|
| testified that he recorded Sgt. Espinal with his cell phone. Sgt. Espinal told refused to put down his phone and added that he had the right to record. Se7(2)(b) tried to position his phone so that it recorded from a cup holder Sgt. Espinal told him that the officers were recording. Se7(2)(b) did not know how his cell phone recording ended. He did not start another recording after his first recorded ended because he was told not to. |
| testified that when \$87(2)(b) recorded the officers, Sgt. Espinal told him to put his phone down. Sgt. Espinal said that his own camera was on, so \$87(2)(b) did not need to record. |
| Sgt. Espinal testified that when he first approached the vehicle, he observed a cell phone in hand. Sgt. Espinal told \$37(2)(5) that he could record if he wanted, but he needed to clear his hands of any objects. Sgt. Espinal did not look at this cell phone closely. Sgt. Espinal assumed that if it was recording, it could continue recording without being in hands. \$37(2)(5) placed his phone in the center console and faced it toward the officers. Sgt. Espinal did not remember if \$37(2)(5) complained about having to record this way. Sgt. Espinal instructed \$37(2)(5) to clear his hands of any objects because he had previously received bulletins about cell phones that could shoot a single bullet like a Deringer pistol or be used as a Taser. Sgt. Espinal did not remember when such bulletins were posted. Sgt. Espinal had this concern specifically about individuals who were involved in vehicle stops. He had previously told passengers of vehicles to stay off their phones because of this specific safety concern. Sgt. Espinal's concern that \$37(2)(5) phone may have been a weapon was a general concern, not specific to anything he observed during this incident. Individuals have the right to lawfully record police activity, including detentions, searches, and arrests. Officers may not discourage an observer from recordings a police officer's activities or obstruct recording devices when there is no legitimate law enforcement reason to do so. The right to record police action can be limited for reasons such as the safety of officers. NYPD Patrol |
| Guide Procedure 203-29 (BR 08). § 87(2)(g) |
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| § 87(2)(g) |
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testified that PO Grasser patted around \$87(2)(b) waistband with an open palm. He did not allege that PO Grasser went into \$87(2)(b) pocket. Later, Sgt. Espinal touched \$87(2)(b) s sides from her ribcage to her thigh. PO Grasser patted around his waistline and genitals.

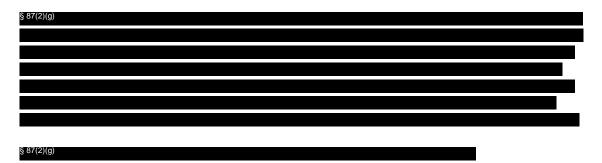
Sgt. Espinal, PO Grasser, and PO Holder all testified that they smelled marijuana upon approaching this vehicle.

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| PO Grasser testified that he patted over § 87(2)(b) | body to search for marijuana. He did not |
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| remember if he put his hands into §87(2)(b) | pockets. After an officer searched § 87(2)(b) |
| PO Grasser searched § 87(2)(b) | |
| | |
| Sot Espinal did not remember if he frisked \$870 | ()(b) |

Sgt. Espinal made a memo book entry noting that during this stop, he smelled the odor of marijuana (BR 09). PO Holder's memo book entry only included a link to his BWC footage (BR 10). PO Grasser did not make a memo book entry (BR 11).

In <u>People v. Chestnut</u>, 36 N.Y.2d 971 (1975), the court ruled that when officers stop a moving vehicle and detect the odor of marijuana emanating from that vehicle, they may conduct a warrantless search of that vehicle and its occupants (BR 12).



Allegation F – Abuse of Authority: Sergeant Edwin Espinal searched the vehicle in which 887(2)(b) and 887(2)(b) were occupants.

Sgt. Espinal's BWC (BR 01), beginning at 9:50, showed him search throughout the vehicle, from the rear passenger side of the vehicle, to the front passenger seat, to the front driver seat, and finally the trunk.

As stated above, Sgt. Espinal's BWC footage showed that \$87(2)(b) and and \$87(2)(b) both acknowledged that the officers may have smelled marijuana.

As stated above, Sgt. Espinal, PO Grasser, and PO Holder all testified that they smelled marijuana upon approaching this vehicle.

Sgt. Espinal did not remember who searched the vehicle.

Sgt. Espinal's memo book reflected that he searched the vehicle for marijuana with negative results (BR 09).

In <u>People v. Chestnut</u>, 36 N.Y.2d 971 (1975), the court ruled that when officers stop a moving vehicle and detect the odor of marijuana emanating from that vehicle, they may conduct a warrantless search of that vehicle and its occupants (BR 12).

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| § 87(2)(g) | |
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| | - |
| § 87(2)(g) | |
| § 87(4-b), § | 87(2)(g) |
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| § 87(4-b), § | 87(2)(9) |
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| | Civilian and Officer CCRB Histories |
| • | § 87(2)(b) |
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| • | § 87(2)(b) |
| • | This is the first CCRB complaint to which \$87(2)(0) has been a party (BR 18) |
| • | § 87(2)(b) |

- PO Grasser has been a member-of-service for six years and has been a subject of 12 allegations in five cases, none of which were substantiated.
- PO Holder has been a member-of-service for eight years and has been a subject of 38 allegations in 12 cases, five of which were substantiated.
 - Case #201502028 involved a substantiated discourtesy allegation. The Board recommended that he receive Formalized Training. The NYPD imposed Command Level Instructions.
 - Case #201804023 involved substantiated vehicle search and frisk allegations.
 The Board recommended that he receive Formalized Training, which the NYPD imposed.
 - Case #201904264 involved two substantiated Failure to Provide RTKA Card allegations. The Board recommended Command Level Instructions. The NYPD imposed instructions.

Mediation, Civil and Criminal Histories

- §87(2)(b) declined to mediate this complaint.
- According to the OCA, \$87(2)(b) has no history of convictions in New York City (BR 20).
- According to the OCA, §87(2)(b) has no history of convictions in New York City (BR 21).
- According to the OCA, § 87(2)(b) has no history of convictions in New York City (BR 22).
- As of January 31, 2020, the NYC Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (BR 23).

| Squad 6 | | | |
|--------------------------|-----------------------|--|------------------|
| Investigator: <u>e/N</u> | Mac Muir Signature | Supervising Investigator Muir Print Title & Name | 10/21/20 Date |
| Squad Leader: | | IM Jessica Peña 10/23 | |
| Davianan | Signature | Print Title & Name | Date |
| Reviewer: | Signature | Print Title & Name | Date |

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